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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/901,244	07/09/2001	Gabriel Raviv	29888/36772A	8384

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EXAMINER

MCCROSKY, DAVID J

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 12/22/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/901,244

Applicant(s)

RAVIV ET AL.

Examiner

David J. McCrosky

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-42,44-52 and 54-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-42,44-52 and 54-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5,10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The indicated allowability of claims 32-42, 44-52 and 54-59 is withdrawn in view of the newly discovered reference(s) to Rosenbaum et al and Mullin et al. Rejections based on the newly cited reference(s) follow. The following rejections are based on the claims as presented in the amendment filed 14 February 2003.

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "30" has been used to designate both a ring and different diameters in Figs. 2 and 3. Reference character "32" has been used to designate inconsistent parts in Figs. 1, 2, 5 and 6. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 31. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: the first sentence of the specification should be amended to include the patent number of the parent application. Appropriate correction is required.

Claim Objections

Claim 32 is objected to because of the following informalities: "flangeless" should be added after "first" in line 7 for consistency. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 32-39 and 59 are rejected under 35 U.S.C. 102(e) as being anticipated by Rosenbaum et al. The reference discloses an ear probe tip with a first flangeless end and a flange proximal to a second end. An inner diameter of the tip increases in diameter from the first flangeless end to the second end. The inner diameter is capable of receiving a probe end. The claims do not positively recite a structural system comprising a probe that mates with an inner diameter of a tip but merely require that the inner diameter be adapted to receive a probe end.

Claims 40-42 and 44-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Gunterman (cited by Applicant). The reference discloses an ear probe tip with a first flangeless end and a flange proximal to a second end. A first cross-sectional area proximate to the first flangeless end is smaller than the cross-sectional area proximate to the second end. See Figs. 3 and 5.

Claims 40-42 and 44-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Huntress (cited by Applicant). The reference discloses an ear probe tip with a first flangeless end and a flange proximal to a second end. A first cross-sectional area proximate to the first flangeless end is smaller than the cross-sectional area proximate to the second end. See Figs. 1 and 2.

Claims 40-42 and 44-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Shore et al (cited by Applicant). The reference discloses an ear probe tip with a first flangeless end and a flange proximal to a second end. A first cross-sectional area proximate to the first flangeless end is smaller than the cross-sectional area proximate to the second end. See Fig. 6.

Claim 59 is rejected under 35 U.S.C. 102(e) as being anticipated by Håkansson (cited by Applicant). The reference discloses a tip with a tapered first end (5) and a second end. The inner diameter increases from the tapered first end to the second end and receives a probe end (1). An annular flange (10) is proximal to the second end.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 32-42, 44-52 and 54-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mullin et al in view of Baum (cited by Applicant). Mullin et al teach an ear tip with a first flangeless end and a second end. An inner passage incrementally increases in size from the first flangeless end to the second end. The inner passage mates with probe end (56). See Figs. 3 and 7. Mullin et al do not teach a flange or ring. However, Baum teaches an ear tip with a first flangeless end and a second end. At least one flange and ring are provided to automatically establish an acoustic seal. See col. 4, ll. 10-17. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ear tip of Mullin et al with the ring and/or flange of Baum to automatically establish an acoustic seal.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 32, 40, 49 and 59 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 5, 10, 12 and 16 of U.S. Patent No. 6,258,043 to Raviv et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent claims contain an increasing inner diameter, flange and a ring.

Response to Arguments

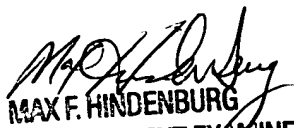
Applicant's arguments with respect to claims 32-42, 44-52 and 54-58 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. McCrosky whose telephone number is 703-305-1331. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F. Hindenburg can be reached on 703-308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


MAX F. HINDENBURG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700